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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 28th July 2025

S.R.O. No. 575/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th June 2025 passed in the I.D. Case No. 02 of 2014 by the Presiding Officer, Labour Court, Jeypore, Koraput on the industrial dispute between the management of M/s J.K. Paper Mills represented through its Executive Vice-President (Works), Jaykaypur, Dist. Rayagada, PIN - 765017 and Shri Binod Kumar Choubey, S/o Narendra Choubey, Qtrs. No. E-5/19, P.O. Jaykaypur, Dist. Rayagada, PIN - 765017 is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT AT JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 02 OF 2014

[U/s. 12(5) read with S 10(1)(c) of the Industrial Disputes Act, 1947]

Dated the 30th June 2025

Present :

Shri Pravuram Das Adhikari, O.J.S.,
Presiding Officer,
Labour Court,
Jeypore.

Between :

M/s J.K. Paper Mills represented through its . . . Employer-Management
Executive Vice-President (Works), Jaykaypur,
Dist. Rayagada, PIN-765017.

And

Shri Binod Kumar Choubey, . . . Workman-Claimant
S/o Narendra Choubey,
Qtrs. No. E-5/19,
P.O. Jaykaypur, Dist. Rayagada,
PIN-765017.

Appearances :

Shri N.K. Mishra & K.N. Samantaray, Advocates	. .	For the Management
Shri Balinkeswar Padhy, Advocate	. .	For the Workman

AWARD

This matter arises out of the reference made by the above appropriate Government under the aforesaid Sections of Industrial Disputes Act, 1947 (for brevity hereinafter I.D. Act) for determination of the dispute in between the parties by answering its schedule question upon refusal of his employment by striking off his name from the Muster Roll of the Company by the management and as to the appropriate reliefs to which he is entitled to.

2. Shorn of unnecessary details, the case of the claimant may be permitted to be reproduced, in brief, as may be necessary for adjudication of their dispute, as per claim statement wherein it has been stated that the claimant served in J.K. Paper Mills as an operator with effect from the 16th January 1995. It is alleged that his name has been struck off from the Muster Roll of the Company and thereby he has been terminated by the management without giving him opportunity of being heard in a Domestic enquiry and/or by the Disciplinary Authority under the guise of false and fabricated charges and without giving him a show cause notice and without service of the order of termination and thereby the management committed grave injustice to a senior employee like him and also committed illegality for deviation of established procedure and principle of natural justice and utter violation of the provisions of law including Article 311 of the Constitution of India. It is further alleged that the management being biased took decision of terminating him taking the plea of his absenteeism contending the same as his voluntary abandonment of service. It is further stated that though he was regularised and was working as sincere workman-operator from the very beginning but for some misunderstanding in between him and the Chief Security Officer (hereinafter, S.O.) over illegal transportation of article of the company in connivance with the S.O., he became victim of false and fabricated charges by the management having grudge upon him and thereby he had to struggle hard against the unfair labour practice by way of harassment, humiliation, mental torture and non-co-operation, in level of Employees Union etc.

2.1 It is further stated that he was charge sheeted twice for false, fabricated and baseless allegation of his unauthorized absence from duty and his indulgence in preaching and practicing "Black Magic". It is specifically alleged that the brain behind these allegations was that of the S.O. and some management staff who intended to escape the S.O. Shri Srivastav from his above wrong doings though he remained absent from duty on medical grounds. It is further alleged that he has been superseded by his juniors in getting promotion for which he has been humiliated in the workers society. It is also stated that the claimant has not done any such offence so as to be visited with a drastic step alike striking off his name without holding proper inquiry and violating the principal of natural justice. It is further stated that though a domestic inquiry proceeding was initiated and one K.C. Sahu, Manager (P&IR) was appointed as Inquiry Officer but he did not permit him to defend his case through a legal representative when the office bearers of his union did not co-operate to him in defending him in the said inquiry at the instance of the management for which he had to confront a mighty management but he could not do so. Amid such helplessness of the claimant, the Inquiry Officer, however, concluded the inquiry without his participation and without him giving opportunity of being heard. It is also alleged that though he has been imposed with above major punishment of termination by such striking his names which he came to know from the quarter

vacation notice received on the 18th March 2010 from S.O. but he was not issued with any show cause nor supplied with the copies of the inquiry report, whether *ex parte* or otherwise, prior to that date and thereby the management violated the provisions of the Disciplinary rules and fundamental principles of domestic inquiry. Being aggrieved by such acts of the management, the claimant filed the complaint before the District Labour Officer-cum-Conciliation Officer, (hereinafter, C.O. in short) Rayagada who, on failure of conciliation despite his conduct of due inquiry, submitted failure report to the above Government. Upon such report, the Government was pleased to make reference of the such dispute/matter vide its Order No. IR(I.D.)-47/2013-2309/LESI, dated the 12th March 2014 for adjudication and answering of the schedule question as given below:

SCHEDULE

“Whether the refusal of employment by way of striking off the name of Shri B.K. Choubey, Ex-Operator, (Paper Machine) from the Muster Roll of Company with effect from the 18th January 2010 by the management of M/s J.K. Paper Mills, At/PO Jakaypur, Dist. Rayagada is legal and/or Justified ? If not, what relief is Shri Choubey is entitled to ?”

Accordingly, the Claimant has filed the above claim statement with the prayer directing the management to reinstate him with payment of full back wages.

3. Upon notice, after filing of the above claim statement, the management entered appearance through its Executive Vice-President (works) and filed written statement (hereinafter, WS for short) on the 4th September 2014. Shorn of unnecessary details, the necessary answers as rendered in the WS may be permitted to reproduce herein as follows. It is stated vide Para. 3 that the above reference is not maintainable in law much less on the facts & circumstances. It is stated at Para. 6 that the reference is ambiguous and not certain as to whether it is a case of refusal of employment or dismissal by striking off the name of the claimant workman from the roll since they are different and distinct items of dispute. It is alleged at Para. 6(b) read with 6(d) that the reference is extraneous and there is no proper conciliation on the subject matter and the reference is rendered vague, absurd and unreasonable and nullity in the eye of law. The complaint vide Form-D can not be treated as an industrial dispute. It is also alleged that the conciliation process is otherwise exposed to be bad, untenable, illegal, unjustified and not in accordance with the provisions of the Act and as such the above reference is not maintainable.

3.1 Admittedly the J.K. Paper Mills is one of the prime paper industries of the State having been established in the year 1962 at Jaykaypur, Rayagada. There is no dispute the workman was engaged as operator with effect from the 1st January 1995 as per Para. 7(ii) of W.S. It is stated thereat that the workman was issued charge sheet on the 28th November 2009 by the Disciplinary Authority. The reply of the workman dated the 30th November 2009 was found not satisfactory. In result, the Enquiry was conducted by the Enquiry Officer. The workman was informed about the details of the enquiry for ensuring reasonable opportunity of participation and affording adequate occasion to him for his defence. His application for engagement of a lawyer admittedly could not be acceded by the Disciplinary Authority as per Para. at 7(iii) & (iv) of W.S. It is alleged thereat that the workman wilfully and deliberately remained absent despite repeated offers to him to attend in the said Enquiry for which he was set *ex parte* and Enquiry proceeded and was closed and all the charges were proved against him and the report was submitted.

3.2 It is also alleged that during pendency of the above proceeding, the workman continued to commit several other misconduct for which he was issued with further charge sheet dated the 7th December 2009. It is also stated that the workman remained absent on medical from the 10th

December 2009 to the 2nd January 2010. The sick intimation was received from the E.S.I. Hospital by the management. It is alleged that the workman neither reported back to his duties on and from the 30th January 2010 nor sent any intimation for which he was found to have remained unauthorised absent with effect from the 3rd January 2010. It is stated at Para. 7(viii) that the workman was issued with letter dated the 13th January 2010 indicating therein about his such continuous unauthorised absence and he was directed therein to resume his duties forthwith and to submit satisfactory explanation in such respect failing which Clause 29(e) of the Certified Standing Orders(hereinafter, in short C.S.O) would be made applicable to him. It is alleged at Para. 7 (ix) that the workman neither resumed duties nor cared to send any communication against such letter dated the 13th January 2010 for which it was reasonably construed that workman was no more interested to continue in his employment and it was deemed that he has left the services of the company on his own accord. Accordingly the workman was intimated vide Letter No. JKPW/PO/06/2010, dated the 18th January 2010 without imposing the punishment of dismissal so as to save him from being seriously affected in getting future employment. In view of the above among others, the alleged acts of the management can not be treated as retrenchment within the meaning of Section 2 (oo) of I.D. Act much less can be construed to be a case of termination or refusal of employment by the management in terms of statutory provisions under the Act in the event of dismissal/termination of employment by other means. It is also stated at Para. 6(e) that the subject matter which was raised before C.O. by the claimant having related to promotion being of general nature ought to have been espoused by the Union under Section 2(k) of I.D. Act but not in his individual capacity under Section 2A there under. It is specifically stated at Para. 10 of WS denying all the claims and contentions made in the claim statements of the workman save and except specifically admitted by it and thereby putting the workman to render strict proof of all such facts when the validity and propriety of the alleged refusal of employment along with the maintainability of the reference deserved to be considered at the first instance.

4. On perusal of above pleadings of the both side the issues have been settled on the 9th October 2014 as per reference and thereafter additional issue at the instance of the management on the 26th May 2015 for adjudication of the dispute under reference and for answering the schedule question there under, which are as follows :—

ISSUES

(i) Whether refusal of employment by way of striking off the name of Shri B.K. Choubey, Ex-Operator (Paper Machine) from the Muster Roll of the Company with effect from the 18th November 2010 by the management of M/s J.K. Paper Mills, At/P.O. Jaykaypur, Dist. Rayagada is legal and/or Justified ?

(ii) If not, what relief Shri Choubey is entitled to ?

(iii) Whether the disciplinary proceedings preceding the impugned cessation of employment of the second party is valid and proper ?

5. In order to substantiate his claim, the claimant-workman has examined himself as W.W.1 and has adduced documentary evidence vide Ext.1 to Ext.16 whereas one witness - General Manager-HR & IR has been examined as M.W.1 who has proved documents vide Ext. A to Ext. K on behalf of the management.

ARGUMENT AND COUNTER ARGUMENT

6. Heard arguments from both side Ld. Advocates. Ld. Advocate for the management in support of his written notes of argument later filed, submitted that the reference is not maintainable since the dispute is not an “industrial dispute” under Section 2 (k) of the Act. According to him, the workman though remained absent on medical ground from the 10th December 2009 to the 2nd January 2010 as per sick intimation from E.S.I. Hospital but thereafter remained unauthorised absent on and from the 3rd January 2010 for which he was issued with notice dated the 13th January 2013 with direction to resume duty failing which the Clause 29(e) of C.S.O. shall be made application to him and this case is squarely covered under the provisions of Section 2 (oo) (bb) of the I.D. Act. The same has been stated at Para. 4 of written argument. It is further stated therein that the workman despite such notice issued to him did not join nor submitted any explanation for which it was construed that he had left his service on his own accord and his name struck off from the rolls and he was accordingly intimated vide letter dated the 18th January 2010. Accordingly such cessation of his employment on the ground of his abandonment of his service which does not amount to retrenchment nor a case of termination or refusal of employment by the management. As such, such striking off his name is legal and justified for affirmation of principle of natural justice and fair play. Further it is submitted that even if such termination be treated as an industrial dispute but the same has not been espoused by the Union but complaint has been made by an individual workman for which the C.O. can be said to have erroneously entertained such dispute under Section 2(k) for which the reference can not be said maintainable. As such action taken against the workman under Clause 29(e) of C.S.O. can not be said to attract Section 2A or 2(K) of the I.D. Act. It is further stated that the workman having come to know about such striking of his name from the roll on receipt of letter issued to him vide Ext.13 for his unauthorised absence from the 3rd January 2010 to 13th January 2010 as admitted by him in his evidence but did not put forth any grievance before the management before he made such complaint before C.O. nor he could produce any documentary proof of his alleged communication made to the management during such absent period either before the management or C.O. or in this proceeding. Accordingly, Ld Advocate for the management relying upon the Judgment of Hon'ble Apex Court in the Case of Rolston John Vs Central Government Industrial Tribunal-cum-Labour Court and others, reported in AIR 1994 SC 13, Western India Match Company Ltd. Vs. Workmen : AIR 1973 SC 2650 The Buckingham and Carnatic Co.Ltd. vs. Venkatiah and Ors ; AIR 1964 SC 1272 AND the judgment of Hon'ble High Court of Rajasthan in the case of Rajveer Singh vs Judge, Labour Court and Ors, reported in (1998) III LLJ 143 conclusively submitted that the workman has raised apparently false and frivolous claim against the management though the cause of action is the product of his own action for remaining unauthorised absent for which the management can not be found fault with any manner whatsoever and prayed for answering the reference in negative against the workman and in favour of the management.

6.1 In counter, Ld Advocate for the workman while opposing the above argument on behalf of the management placed argument being supported by written notes of arguments that the management can not allowed terminate long service of the employment of the workman by such striking without proper and complete inquiry and without issuing show cause notice before such punishment and not by mere caution letters without giving sufficient time to the claimant to explain his absence when he was sick from November 2009 till the 18th January 2010 and thereby such termination is neither legal nor justified. It is further stated that the management being biased by the S.O. whimsically initiated departmental proceeding upon false allegations against the claimant

and having failed to prove the same according to law became revengeful and aimed at dismissal of the workman in any manner and being vindictive and abusing the principles of natural justice struck off his names from the muster rolls of the company without considering his long past service and violating the set practice and procedure and with *mala fide* intention and with unfair labour practice also filed false F.I.R on the 11th January 2010 though turning to GR Case 12/2010 but the workman has been acquitted off the offences therein vide judgment dated the 20th March 2017 and ultimately treating his such absence as unauthorised one arbitrarily without giving him sufficient opportunity/time to resume his duty or reply has construed that he was not interested to continue in his employment and invoked the provision of the Clause 29 (e) of the C.S.O only by giving two days' notice struck off his names from the muster rolls which thereby amounts to illegal termination for without any lawful departmental inquiry or any reasonable notice thereof and are violating to natural justice as the workman was sick from November 2009 to the 18th January 2010. As such, such termination or dismissal is as punishment which has been imposed without holding the principle of natural justice and settled practice and as such the same cannot be said legal or justified though Section 2(oo) of the Act cannot apply in this case. As such, the workman is entitled to reliefs as sought for under Section 11A of the Act. Accordingly the Ld. Advocate relying upon the Judgments of Hon'ble Apex Court in the Case Delhi Cloth and General Mills Co. Ltd. Vs. Shambhu Nath Mukherji and Others, AIR 1978 SC 8 and M/s Scooters India Ltd. Vs. M. Mohammad Yaqub, 2001 LLR 54 and judgment of Hon'ble Punjab and Haryana High Court in the case of Bhuna Co-operative Sugar Mills Ltd. Vs. Mohinder Singh and Another reported in 2001 LLR 141 as per memo of citation dated the 26th June 2025 filed within the knowledge of the Ld. Advocate for the management made prayer therein for granting Award in favour of the workman who has suffered long years without any employment.

7. Now I may be permitted to peruse the above noted authoritative pronouncements and to see their applicability and relevancy and acceptability in the present fact and circumstances of the case. In Rolston John Vs. Central Government Industrial Tribunal-*cum*-Labour Court and Ors. (*Supra*) , the Hon'ble Apex Courts relying upon the earlier decisions of The State Bank of India Vs. N. Sundara Money; L. Robert D'souza Vs. Executive Engineer, Southern Railway and Ors. ; Mohan Lal Vs. Management of Bharat Electronics Ltd.; H.D. Singh Vs. Reserve Bank of India and Ors.; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Ors., wherein, .. xx. Mechanic-*cum*-Operator .. xx .. stood terminated with effect from July 30, 1974 .. xx .. The appellant had availed of leave from the 23-7-74 to 29-7-74 and was to report for duty on the 30-7-74. He actually joined duty on 7-8-74, have observed and held as follows :

"..xx. Clause 24(e) of the Standing Orders reads: If a workman remains absent beyond the period of leave originally granted or subsequently extended he shall lose lien on his appointment unless: (i) he returns within 10 days of expiry of his leave; (ii) explains to the satisfaction of the management and his inability to return on the expiry of his leave; .. xx.. we have to hold that the termination of the services of the appellant under Clause 24(e) of the Standing Orders constitutes 'retrenchment' under Section 2(oo) of the Industrial Disputes Act and the Tribunal was wrong in concluding that the termination in the instant case does not attract Section 2(A) of the Industrial Disputes Act. .. x.x xx"

Thus, there is no doubt, this relied upon decision does not favour the management as it goes against the contention of it and thereby it favours to the claimant at least to the extent of above underlined portion.

7.1 In *Western India Match Company Ltd. Vs. Workmen (Supra)* referring many earlier decisions, it has observed and held by the Hon'ble Apex Court as follows:

"1. ... xx.. 2. The Company appointed one Prem Singh as a watchman on September 1, 1965. The letter of appointment states that he would be "on probation for a period of six months." .. xx .. The period of probation expired on March 1, 1966, but he continued to serve on his post. On April 13, 1966 the Company passed an order extending the period of his probation by two months with retrospective effect from March 1, 1966. Nine days later on April 22, 1966, the Company passed this order : "the above watchman has been discharged with effect from the 1st May 1966 for the reasons mentioned below : (1) probation period not approved, services are no longer required by the Company. This order gave rise to an industrial dispute. ..xx.. The case of the Sangh was that the employment of Prem Singh on probation for six months was in contravention of the Standing Order. It was maintained that on the expiry of two months Prem Singh automatically became a permanent workman ... xx ... According to the Company, the term of six months' probation was valid. It was said that as his work was not found satisfactory, he was discharged. 4. The Labour Court has found that the discharge was neither *mala fide* nor an act of victimisation for Trade Union activities. However, the Labour Court has set aside the order of discharged .. xx.. It has held that on completing two months' probation Prem Singh automatically became a permanent employee. 5 ... xx .. 6. The next submission of Shri Daphtary is that the special agreement is not inconsistent with the Standing Order. ..xx.. While the Standing Order says: "Confirm him on the expiry of two months", the special agreement says: "No, wait till the expiry of six months." There is thus a conflict between them. They cannot co-exist. So we are of opinion that the special agreement is inconsistent with the Standing Order to the extent of the additional four months' probation. 7. The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the Standing Order. xx... These decisions are overruled ... xx .. 11. The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. ..xx ... xx.... It is settled law now that the Labour Court may interfere with the order of discharge where it is satisfied that it was made *mala fide* or was a measure of victimisation or unfair labour practice ... xx. Labour Court may interfere with the order of discharge if it finds that the order is arbitrary or capricious or so unreasonable as to lead to the inference that it is not made *bona fide*. As there was no plea and no evidence to show that the work of Prem Singh was unsatisfactory, the conclusion is obvious that the order of discharge is arbitrary. Accordingly, the Labour Court could interfere and make an order of reinstatement. 17. There is no force in this appeal and accordingly it is dismissed with costs"

In this case though there is no dispute as to permanency or probationary period of the workman. There arises dispute as to *mala fide*, arbitrary, unfair labour practice and victimisation for such discharge of the workman. In view of the above decision, the Labour Court has power to interfere with the order of such discharge if the same be proved and such grounds are proved in this case. Similarly the contention of inconsistency in between the C.S.O. and the Special agreement is to be pleaded and proved by the management so as to invoke the principle of this authoritative pronouncement. As such this may not help the management if the above inconsistency is not proved when there is no such dispute over right of permanency, when the standing order in that case is found to have been in favour of workman prevailing over special agreement made in favour of management as decided therein.

7.2 In *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Ors.*(*Supra*) it has been observed and held as follows:—

“ The principal question .. xx. Relates to the true scope and effect of the provisions contained in Section 73 of the Employees’ State Insurance Act, 1948 .. xx ... xx ... On January 10, 1957, the respondent Venkatiah ... xx .. , had gone on leave for six days. Taking into account the intervening holidays, the said leave expired on January 18, 1957. He, however, did not join duty on the 19th January as he should have, but remained absent without leave without sending to the appellant any communication for extending his leave. On the 11th March 1957 he sent a letter to the appellant stating that sometime after reaching his village near Kanigiri he suffered from fever and dysentery and was treated by the Civil Assistant Surgeon, Kanigiri. This letter was accompanied by a certificate issued by the said Civil Assistant Surgeon. In this certificate it was stated that Venkatiah suffered from chronic malaria and dysentery from January 15 to March 7, 1957. When he appeared before the Manager of the Company, he was asked to go to the Senior Medical Officer of the appellant for examination. The said Officer examined him and was unable to confirm that he had been ailing for a period of nearly two months. Acting on that opinion, the appellant refused to take back Venkatiah and when Venkatiah pressed to be taken back, the appellant informed him on March 23, 1957 that he could not be reinstated as his explanation for his absence was unsatisfactory. The case of Venkatiah was treated by the appellant under Standing Order No. 8(ii) of the Standing Orders of the appellant. 2. Meanwhile, Venkatiah had applied to the Employees’ State Insurance Corporation and on or about the 15th June 1957 he obtained cash sickness benefit for the period covered by the medical certificate issued by the Civil Assistant Surgeon, Kanigiri. .. xx .. 3. When the appellant refused to take back Venkatiah in its employment, .. xx ... The respondent, however, succeeded before the Labour Court primarily on the ground that the decision of the appellant not to take back Venkatiah was inconsistent with the provisions of Section 73 of the Act. ...xx ... xx., the appellant moved the Madras High Court ... xx This writ petition was allowed by Mr. Justice Balkrishna Ayyar. The learned Judge held that Section 73 of the Act was inapplicable to the present case .. xx.....xx. Respondent’s appeal was allowed by the Division Bench .. xx ... The Division Bench has held that Section 73 applied to the present case and xx .. 6. .. xx .. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf ... xx .. 7 ... xx ... Before effect is given to the inference of relinquishment of service which arises from the first part of the clause, an opportunity is given to the employee to offer an explanation and ... xx ... 8. It is true that absence without leave for eight consecutive days is also treated as misconduct under Clause 13(f) of the Standing Orders. The said clause refers to the said absence and habitual absence without leave. In other words, the position under the Standing Orders appears to be that absence without leave for more than eight consecutive days can give rise to the termination of the contract of service either under Standing Order 8(ii) or may lead to the penalties awardable for misconduct after due enquiry is held as required by the relevant Standing Order. The fact that the same conduct is dealt within two different Standing Orders cannot

affect the applicability of S.O. 8(ii) to the present case. ... xx ... 11. Section 73 of the Act reads as under : Employer not to dismiss or punish employee during period of sickness, etc. (1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work. (2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative. "12. Mr. Dolia contends that since this Act .. xx ... is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense ... xx .. Section 73(1) prohibits the employer from dismissing, discharging, reducing or otherwise punishing an employee. This seems to suggest that what is prohibited is some positive act on the part of the employer, such as an order passed by him either dismissing, discharging or reducing or punishing the employee. Where termination of the employee's services follows automatically either from a contract or from a Standing Order by virtue of the employee's absence without leave for the specified period, such termination is not the result of any positive act or order on the part of the employer, and so to such a termination the prohibition contained in Section 73(1) would be inapplicable ... xx ... In considering the question about the true denotation of the word "discharge" in Section 73(1), it is relevant to bear in mind the provisions of Section 85(d) of the Act. Section 85(d) provides that if any person in contravention of Section 73 or any regulation, dismisses, discharges, reduces or otherwise punishes an employee, he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both. The word "discharge" in Section 73(1) must, therefore, in the context, be taken to be a discharge which is the result of a decision of the employer embodied in an order passed by him. It may conceivably also include the case of a discharge where discharge is provided for by a Standing Order. In such a case, it may be said that the discharge flowing from the Standing Order is, in substance, discharge brought about by the employer with the assistance of the Standing Order. Even so, it cannot cover the case of abandonment of service by the employee which is inferred under Standing Order 8(ii) xx xx .. ".

In this case, there is no dispute as to applicability or non-applicability of the 73 of the above Act. However, the observation as underlined above that discharge is brought about by the employer with the assistance of the C.S.O. cannot cover the case of abandonment of service by the employee which is inferred under C.S.O. since the factum of absence of workman without leave can be said covered under C.S.O. alike in the above case under two clauses and the positive act of the employer in this case can not be ruled out for giving notice and striking off of names of the workman from the rolls for terminating him thereby as a consequential effect. Thus, the management cannot be said to have much assistance from the above decision rather the same can be said to be in favour the workman, if otherwise is not proved by the management.

7.3 In counter as relied upon on behalf of the workman in the case of Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Ors. (*Supra*), wherein,

“1 ... xx .. The workman .. xx .. was automatically struck off the rolls” by the management (appellant) on August 24, 1965 xx.. It appears from the letter written by the management to the workman on January 19, 1966 that- your name has been automatically struck off the rolls under the provisions of the Standing Orders with effect from the 24th August 1965, for continued absence without any intimation ... xx... 6. Thus a dispute arose which led to conciliation and then ‘to the Reference which resulted in an award in favour of the workman on December 21, 1967, reinstating him in service with full back wages xx .. 7. Before the Labour Court an objection was taken questioning the Reference and the following issue was framed: Whether the dispute is an industrial dispute and the reference is bad ? The Labour Court answered the issue against the management holding as follows: .. xx... I am therefore unable to accept the argument of the management that the dispute referred to this Court cannot be treated as an industrial dispute because it relates to an individual workman. .. xx. ... xx ... The workman last attended work on 14th August, 1965. 15th August was a public holiday. He was, therefore, absent from work only from 16th of August.. .. xx ... 17. Striking of the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(oo) of the Act. There is nothing to show that the provisions of Section 25F(a) and (b) were complied with by the management in this case. The provisions of Section 25F(a), the proviso apart and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid ... xx .. ”

From the above there remains no doubt striking off the name of the workman amounts to termination of service which amounts to retrenchment within the meaning of Section 2(oo) of the I.D. Act. As such the same assists the workman. On the other hand, the objection as to necessity of raising of such question of espousing of individual dispute of the workman though has not been answered in the above relied upon authority case, for not being raised earlier, has been raised in this case, the reference has been made under the above section. As such the same may be answered independently in this case without having any assistance of the above authority or the authorities as relied upon on behalf of the management since nothing such like issue is found to have been raised thereat.

7.4 In Scooters India and Ors. Vs. Vijai E.V. Eldred(*Supra*), the Respondent was appointed as unskilled workman w.e.f. 9th September, 1974 and was then promoted to the post of a semi-skilled worker w.e.f. 7th June, 1975. 3. On 1st August, 1976 the Respondent’s name was removed from the roll of the Company under Standing Order 9-3-12.

“ ... xx..... The said Standing Order reads as follows: Any workman who remains absent from duty without leave in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the company of his own accord, without notice, thereby terminating his contract of service with the company and his name will, accordingly, be struck, off the rolls.

4. The respondent raised an industrial dispute, which was referred for adjudication to the Labour Court, Lucknow. 5. By an Award dated the 20th July, 1984, the Labour Court held that there was retrenchment. The Labour Court held that as the provisions of law, regarding retrenchment, had not been followed the termination was illegal. ... xx .. 7. Mr. Swarup submitted that there was no retrenchment.. .xx .. Mr. Swarup submitted that the Chief Personnel Officer of the company wrote a letter dated the 24th July, 1976, calling upon the respondent to join duties latest by the 30th July, 1976, failing which his name would be removed from the rolls of the company. He submitted that the respondent still failed to join duty. He submitted that under these circumstances the Appellant is entitled to remove the name of the respondent from the roll of the company under the above-mentioned Standing Order. He submitted that such removal does not amount to retrenchment. xx.. 9. On the other hand Mr. Chinnasamy has relied upon the case of Uptron India Ltd. V. Shammi Bhan and Anr : [1998]1SCR719 .. xx. It was held that principles of natural justice had to be read into such a clause and the principles of natural justice had to be complied with to be informed of the grounds for which action was proposed to be taken against him for overstaying the leave. It was held that a Standing Order which provided for automatic termination of service of a permanent employee would be bad if it did not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically ... xx .. 11. Therefore, it is clear there could not be any automatic termination of the respondent on the basis of Standing Order 9-3-12. Principles of natural justice had to be complied with ... xx... 13. In this view of the matter, in our view, the decisions of the Labour Court as well as High Court are correct and require no interference. Accordingly, the Appeal stands dismissed ... xx .. “

In this case, there is no doubt, notice for taking proposed action to be taken, has been issued by the management but whether the same is reasonable, so far the principle of natural justice which is required to be complied with by the management as per the above decisions, is to be examined in the present facts and circumstances where such notices are found to have been disputed directly or indirectly as seen from the above pleadings which are subjected to be proved by the evidence, so as to hold such termination of the workman is legal or not since there is no doubt such termination by way of striking off the name of the workman even by giving notice, as seen above, in view of the above authoritative pronouncement, amount to termination within the meaning of retrenchment under Section 2 (oo) of the I.D. Act where compliance of the provisions under relevant chapter of retrenchment and lay off is mandatory before such termination. Of course, the alleged termination to be legal and justified has been claimed by the management which it has to prove otherwise since the above relied upon decisions on its behalf can not be said to have rendered much assistance save and except as said above. Thus, let me examine the present case analysing the evidence and pleadings in view of the above authoritative pronouncements.

FINDINGS

8. *Issue No. (i) & (iii)* : These issues are taken up together first to avoid repetition and being vital and interlinked ones. There is no dispute that the management is an “Industry” and the claimant is a “workman” under I.D Act. Admittedly this reference has been made for adjudication and

determination of the dispute as to refusal of his employment of by striking off his name from the muster roll, treating the same as industrial dispute. Such challenge by way of reference of industrial dispute as to cessation of his employment w.e.f the 18th January 2010 is also found from the affidavit evidence of M.W.1 at Para. 2. Of course, the Learned Advocate for the management placed argument, as seen above, that this proceeding is not maintainable since the workman has not espoused his cause of action through the union to be called as an industrial dispute under Section 2(k) of I.D. Act nor the same is covered under Section 2-A of it, according to the management. True, an dispute, if not be held an industrial dispute, this proceeding may be said not maintainable to answer the reference. Similarly, law is well settled and as per statutory provision under the I.D. Act vide Section 10 (4) that this Court shall confine its adjudication of those points as specified by the Government in the reference and matters incidental thereto. Admittedly, the reference or the conciliation has not been challenged by the management prior to this proceeding. The reason for non-challenge is not shown by the management. The reason may be for not so disputing to such non-espousing in the conciliation proceeding itself. On the other hand, the reason for such un-espousing through union was clearly shown by the workman before C.O who having been satisfied with the same referred the dispute after failure of the conciliation. The management is found to have disputed vide Para. 6(e) of W.S which can be read that the matter of promotion being general nature ought to have been espoused by any union to be treated as industrial dispute under Section 2(k) of I.D. Act. It is alleged there that since no union supported the workman the subject matter has been changed from industrial dispute to individual dispute of refusal of his employment. Thus, there remains no doubt there is absence of clear cut pleading as to denial of industrial dispute as to the subject matter of refusal of his employment, in the context, for not being espoused by the union. Thus, it appears that the management would contend that the matter of promotion should not be raised as industrial dispute without being espoused by the union but may not be in case of individual dispute of refusal of employment. No doubt the dispute of refusal of employment without the reference of dispute over promotion has been referred for adjudication under the above reference. Moreover, no issue as to non-maintainability on the ground of non-existence of industrial dispute on ground of such non-espousing through union is found to have been insisted by the management unlike the additional issue which has been framed nor the order impliedly refusing as to framing of issue of maintainability as raised by it but participated in hearing even without putting any question to W.W.1 in his cross-examination as to non-maintainability of this proceeding on any ground. Thus, it can be said that the maintainability of this proceeding on the above ground of un-espousing is not being seriously disputed by the management, when the workman is found to have made his mind clear before the C.O vide his complaint as well as his claim statement that his union did not support him to espouse his cause of action either in the domestic inquiry or in the conciliation proceeding at the instance of the management. The same can also be understood from his affidavit evidence at Para. 09. The same has not been expressly denied nor any suggestion has been made disputing in his cross-examination. As such, the reason for non-espousing through the union remained uncontroverted. Thus, there arises question to my mind that amid such situation, can the workman be deprived of raising any such dispute as industrial dispute or be made remediless thereby, if the same is not espoused through union. These can be answered in negative, if such dispute be subjected to adjudication under I.D. Act in its context and if the same is not barred there under, since there is a legal maxim "ubi jus ibi remedium" which can be translated to "where there is a right there is a remedy". Admittedly the management has not relied upon any nor has produced any authority in support of such contention of dispute not being espoused though union be not called as industrial dispute. On the other hand,

in the above authoritative pronouncements, there seems that the dispute which was raised by individual workman under reference and the same has been answered on merit without finding any wrong of the finding of maintainability, for may be the reason for not raising the question at right time. Since there is no such authority has been produced, to answer the question of maintainability of this proceeding on such ground, though no such issue has been specifically framed, being incidental to adjudicate the industrial dispute while to answer the reference, I am needful to peruse and reproduce the relevant provisions of the I.D. Act, in the subject and context of the present case.

8.1 Section 2 : Definition : In this Act, unless there is anything repugnant in the subject or context-

(a) appropriate Government .. xx .. xx.(aaa)} “average pay” .. xx .. (cc) “closure” .. xx.. ;(d) .. xx. (e) .. xx .. (ee) .. xx .. (f) .. xx .. (g) “employer” .. xx .. ;(gg) “executive” .. xx .. (j) “industry” .xx ... ; (k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; (ka) “industrial establishment or undertaking” .. xx xx .. (oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—(a) voluntary retirement of the workman; or (b); .. xx .. or (bb) .. x.x.; or (c) termination of the service of a workman on the ground of continued ill health (ra) “unfair labour practice” means any of the practices specified in the Fifth Schedule; (rb) “village industries” .. xx ... (rr) “wage .. xx

[2A. (w.e.f the 1st December 1965) dismissal etc. of an individual workman to be deemed to be an industrial dispute.—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

Section 25D - Duty of an employer to maintain muster rolls of workmen: Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this chapter a muster roll, and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment at the appointed time during the normal working hours.

Section 25F - Conditions precedent to retrenchment of workmen : No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment. compensation which shall be equivalent to fifteen days average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

On perusal of the above statutory provisions there remains no doubt the traditional or general industrial disputes within the meaning of Section 2 (k) could / can not be raised individually without being espoused through union or other workmen whose interest can be said affected. The said section did not redress the dispute confining to the employer and individual workman without being espoused by other workmen or union for mention of word of plurality as “workmen” to hold good the meaning of industrial dispute there under. In result in like situation of non-support of union to present workman to espouse his dispute with the employer, the workman was victimized for not his grievance being redressed without interference of the Hon’ble Constitutional Courts by which the workman was able to get his grievance redressed otherwise not. Thereafter, the I.D Act, has been amended with insertion of 2A to meet such situation alike in this case what has happened to the workman when the union did not support him in espousing his cause of action treating his individual dispute as deemed industrial dispute for limited purpose confining to categories of disputes as prescribed thereunder. The following authoritative pronouncements which have been made after such insertion, which may be permitted to be produced to the extent as may be relevant for better understanding before accepting or rejecting the argument as placed on behalf of the management in the context of maintainability of the proceeding or not.

8.2. In *British India Corporation Ltd. V. Mohd. Sadiq*, 1974 Lab IC 420 (P&H HC) it has been observed and held that :

“ .. xx., Section 2A has been engrafted in the Act in 1965 and is to be read as an extension of the definition of ‘industrial dispute’ as defined by Section 2(k) of the Act. The necessity of enacting Section 2A has arisen because it had been held in long line of decisions that an industrial dispute must be between the employer on the one side and the workmen collectively on the other side, or if it is related to a single workman, it must be sponsored collectively by the other workmen or by a union of workmen to constitute an industrial dispute, which could be referred for adjudication under Section 10 of the Act. In order to do away with the necessity of dispute between the management and a single workman being sponsored by the workmen collectively or by a union of workmen, Parliament enacted Section 2A to provide that a dispute between the management and a single workman will be an industrial dispute even if it is not sponsored collectively by the other workmen or by a union of workmen .. xx ...”

In *Forbes Gokak Limited V. J.H. Jadhav*, 2004 LLR 786 (Karn. HC), it has been held that :

“ ..xx .. Section 2A has introduced a legal fiction by deeming a particular individual dispute to be an industrial dispute. This section is concerned only with discharge, dismissal, retrenchment or termination of the service of an individual workman. Any other dispute regarding the individual is not contemplated under Section 2A and will be governed by the law laid down by the Supreme Court on the basis of the Act prior to the amendment. A dispute pertaining to promotion of a workman can only be adjudicated under Section 2(k) and not 2A of the I.D. Act.”-

In *Gauhati Transport Association V. Labour Court*, 1969 Lab IC 1568 (Assam & Nagaland (DB)), it has been held that :

“ .. xx., therefore, an individual himself could raise an industrial dispute regarding his discharge, dismissal, retrenchment or termination of the service and it will be competent for the State Government to refer his dispute as an industrial dispute even though a number of workmen of the establishment or a union composed of them has not taken up the dispute”

In Development Credit Bank Ltd. V. Azim Charnia, 2000 Lab IC 2757 : 2000 (4) Bom. CR 547 (Bom. HC), it has been held that :

“ .. xx .. Therefore, dismissal of a workman is deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is party to the dispute. Merely because the order of reference for adjudication is not styled as under Section 2A of the Act would not change the nature of reference”

The above being the settled position law which having understood by the management and its learned Advocate, no such objection of non-espousing through union has been made before C.O nor in the W.S so far as the present dispute of refusal of employment is concerned, save and except disputing espousing without union so far matter of promotion which is found not to have been subject matter of this reference nor has led any evidence against the allegation of workman as to non- support of union at the instance of management. In view of such facts and legal position, I am unable to accept the argument of the Learned Advocate for the management as to non-maintainability of this proceeding for non-existence of industrial dispute for not being espoused through the union, if the dispute of the workman is covered under Section 2A under I.D. Act which is undisputedly for limited prescribed purpose as seen above. Thus, now it is to be seen whether the dispute of the workman be called as industrial disputes.

8.3. Admittedly, there is no dispute that the name of the workman has been struck off by the management from the muster roll of the company w.e.f the 18th January 2010. This is the mandate of the employer like management to maintain muster rolls for the purpose of chapter of V-A- Lay-Off and Retrenchment as per Section 25-D. Admittedly, there is no dispute the management has not satisfied the conditions precedents to retrenchment of the workman. Admittedly, there is no dispute as to continuous service of the workman for more than prescribed period there under. Amid such admissions, the management contends that such striking off is legal and justified as per Clause 29 (e) of the Certified Standing Order for the reason that the workman himself has remained absent from duty for 10 days and more on his own accord. Such contention of the Management is disputed by the workman. Thus, the management is to prove such claim of legality and justifiability. To prove the same, M.W.1 vide his affidavit evidence at Para.6 has stated that a letter dated the 13th January 2010 was issued to the workman indicating his unauthorised continuous absence from duty from the 3rd January 2010 onwards as per its preceding para for invoking the Clause 29(e) of the C.S.O. In his preceding para at Para.5, W.W.1 is found to have stated that workman wilfully and deliberately avoided to attend his duties for which a charge sheet was issued to him vide Ext.2 upon which he submitted his reply vide Ext.3 and thereafter the workman remained absent on medical ground from the 10th December 2009 to the 2nd January 2010 as per sick intimation Report from E.S.I. Hospital as submitted by him. Thereafter, the workman so remained absent from 03:01.10 onwards. M.W.1 is found contradictory to the WS to the extent of receipt of such sickness intimation by it from the said hospital or it was submitted by the workman as per his affidavit. If the affidavit evidence of M.W.1 be held true that the workman submitted such intimation. Then, it can not be safely said that the workman remained unauthorised absent prior to the 3rd January 2010. Moreover, Ext. 2- Letter dated the 28th November 2009 on perusal would reveal that the same was issued to workman calling for written explanation to be submitted within 48 hours of receipt thereof for taking appropriate disciplinary action for his unauthorised absence for 7 days, *inter alia* others, purportedly under Clause 33(8) of C.S.O dealing with habitual absence without any permission. The same is found to be answered vide the 30th November 2009 by the workman admitting such absence but the same was on medical ground of his wife and daughter for unavoidable circumstances and begged apology. May be the management having got satisfied

is found not to have taken any action for such absence despite the same was proposed vide Ext.2. Similarly the management might have been satisfied as to his leave on medical ground with sickness intimation as submitted by the workman as per M.W.1 prior to 3rd January 2010. If his such testimony be held true, then it can not be said that the workman remained absent without leave prior to the 3rd January 2010 nor such absence be called unauthorised one, particularly when W.W.1 has been suggested by the management in his cross-examination at Para.24 that he had applied leave on medical ground from the 10th December 2009 to the 2nd January 2010 and that he had given medical certificate from E.S.I. Hospital vide Ext. 16 to which he admitted. This may be reason for which no action has been proposed to be taken nor has been for such absence by the workman. Consequentially such absence can be said to be authorised leave.

8.4. Of course, on the 3rd January 2010 the workman is found not to have joined but remained absent without permission or intimation or information and thereby such absence is unauthorised one as per M.W.1 vide his affidavit evidence at Para.5. M.W.1 further vide his affidavit evidence at Para.6 deposed to have issued letter dated the 13th January 2010 vide Ext.G to the workman for his such absence for invoking Clause 29(e) of C.S.O- vide Ext. J and since the workman did not reply nor joined his duties, he was issued with letter dated the 18th January 2010 vide Ext .H invoking the said clause of Ext.J construing the case of his absence as voluntary abandonment of employment. The same has been disputed by the workman. M.W.1 in his cross-examination has been suggested that such his absence from duty is neither wilful nor deliberate one but was due to his sickness. The same has been denied by M.W.1. The Letter dated the 18th January 2010-Ext. H and Ext. J have been marked with objection since the same have not been served upon the workman. On the other hand, Letter dated the 13th January 2010 Ext.G has been admitted into evidence without objection. Ext. G on perusal would reveal that the claimant was absent from the 12th December 2009 till the 2nd January 2010 on medical ground as per sickness as stated above but no communication is alleged to have been made to it for his absence w.e.f the 3rd January 2010 for which he has been advised to resume duties after submitting his explanation within 2 (two) days of receipt of Ext. G by him failing which he shall be deemed to have left the service of the company on his own accord in application of Clause of 29(e) of the above Standing Order Ext.J. Thus there is no dispute the management is aware of his illness up to the 2nd January 2010 for which the workman had so submitted sickness certificate from E.S.I Hospital as admitted by the workman on its suggestion. It is alleged by the management that there has been no communication made by him to it. On the other hand, the management without knowing nor any attempt has been made to know about his state of health fit to join his duty on the 3rd January 2010, while the workman is claiming to be sick by then, before issuing the letter vide Ext.G for invoking 29 (e) of Ext.J and thereafter, in his failure to join or submit any explanation, his name has been struck off by the management from the Muster Roll of the company deeming that he has left his employment and thereafter issued the Letter No. 6 dated the 18th January 2010 vide Ext. H to him. Can such act of the management be said legal and justified for deeming that the workman has left his employment particularly when the Ext.H is found to have been disputed by the workman not to have been served upon him.

8.5. On perusal of Ext. H, it would be seen that the workman was advised vide Ext.G to resume duty after submitting within four days on receipt of Ext.G whereas Ext.G itself discloses such period of two days instead of four days. Admittedly there is no proof of date of receipt of Ext.G by the workman far less of prior to issuance of Ext. H. Even if it was so received by him, can it be said that he was given ample opportunity to so join or submit such explanation, when his fit state of health can not be said surely to so join. As such can it be said that workman had received Ext.G prior to issuance of Ext.H and that he had opportunity to resume his duty and/or give explanation as sought for and that he had so failed to within stipulated time wilfully and intentionally so that

management was justified to so construe that he had abandoned his service on his own accord and that thereby the workman occasioned for the management to invoke its power under 29 (e) Clause of Ext. J. There is doubt in my mind if the management can have such power to invoke the Clause 29(e) of Ext.J dealing with express or implied resignation under such circumstances, without hearing the workman by giving him reasonable opportunity of being heard and before being satisfied as to his unauthorised absence amounting to his resignation or abandonment, particularly when the workman himself disputes to the same.

8.6. On the other hand, if his earlier absence prior to the 2nd January 2025 is admitted to be treated as leave on medical ground, then his further absence without permission may be the case of overstay. There is no doubt, the absence without permission or adequate reason is a minor misdemeanours for which the workman may be liable to warning, censure and fine and maximum punishment of suspension which may be limited to 4 days as per Clause 32 (2) of Ext. J whereas absence without permission exceeding 3 days or overstay may be major misdemeanours as per Clause 33(15) of it for which the workman may be dismissed. Admittedly neither of such Clauses has been invoked by the management nor such is case of absence without adequate reason or habitual absence without permission can be said to have been proved by the management nor have been pleaded by it. Moreover, Learned Advocate for the management fairly conceded while placing his argument that the action of management relies upon the Clause 29 (e) of Ext.J since no punishment by striking off his names from muster rolls can be said to have been imposed without completing the disciplinary proceeding by hearing on question of such punishment of dismissal of the workman before imposing such penalty which is required as principle of natural justice for which the management could not be able to invoke such clauses of misdemeanours in absence of through departmental proceedings. On the other hand, his such absence has been treated as his implied resignation. This can be said disputed by the workman. If at all the workman were with the case that he had wanted his resignation wilfully and intentionally, then he would have stated so expressly or impliedly by remaining absent for such prescribed period without any intimation or leave, in absence of case of overstaying of his leave on medical ground, without protesting his such striking off his name from the rolls, then the Clause 29(e) might have been pressed into service, on his attempts of joining without such acts of the management intending to invoke such provisions. As such by such acts of management to discharge or disengage or terminate the workman can be said to be its volition but it can not be said as resignation out of volition of the workman.

8.7. Of course there is no express bar for the management to invoke such clause of deemed resignation vide Ext.J but same is bound to be made by giving reasonable opportunity so as to enable the workman to ventilate his such volition of resignation or abandonment so as to hold good the principle of natural justice, when such resignation is disputed by he workman. Moreover, if the management were of the view that the workman was deemed to have left the service, then he would not have been asked to resume his duty and furnish satisfactory reason for his absence by giving such short period notice of 2 days or 4 days, which is also not beyond doubt so far as its service prior to striking of his names from the rolls, as seen above. Thus it may mean the management intended to impose punishment for his absence which is claimed to be his unauthorised absence for which it served the notice with warning of the above consequential effect of non-employment or cessation of employment of the workman. If it all the same were intended, then the workman should have been subjected to lawful proceeding as conceded by the Learned Advocate for the management for any consequence of minor or major misdemeanours, as the case may be, as seen above. This has not happened on behalf of the management.

Accordingly, the disciplinary proceeding preceding the such cessation of employment of workman not being completed properly according to law can be not said valid and proper. May be lacking to that effect for which the management otherwise contended as seen above, for invocation of Clause 29 (e) of the Standing Order Ext. J. The reason for invocation of this Clause instead of dismissal following departmental proceeding is found from WS at Page 11. In the WS it is categorically stated that the punishment of dismissal as per Ext.J was seriously considered to adversely affect the workman for which his absence was considered as his leaving of service as voluntarily as per Clause 29 (e) of Ext. J. However, there is no prohibition for the management to invoke such clause but the same be made following the principle of natural justice as would be seen even from the relied upon decisions of the workman as aforementioned. The same is to be tested now.

8.8. Moreover, M.W.1 has been disputed as to his testimony regarding invocation of Clause 29(e) of the standing order and voluntary abandonment of service by the workman by suggestion during his cross-examination that the workman has not been issued with show cause notice for invocation of the said clause of the standing order and that the same has been issued with his personal grudge and ill-will to which M.W.1 denied. Amid the above dispute and non-dispute, the question arises as to whether the said clause of Ext.J can be said applicable to such situation, among others, for such absence of the workman following his earlier leave on account of his admitted medical illness only with issuance of such disputed notice and be held sufficient compliance of natural justice as desired ? To answer the above questions, it is apposite to understand the provisions and the object of the same under Clause of 29 (e) Clause of Ext. J. 29. Resignation Express or Implied:

(a) A permanent workman may resign his post after giving one month notice or by payment of one month's pay in lieu of notice in case of monthly rated workmen and 26 days pay in lieu of notice in case of daily rated workmen (b) No workman shall leave his post unless his resignation has been accepted and unless he has handed over all the tools, records and any other company's property in his charge. If any workman ... xx ... for damages.

(c) The workman must vacate the company's quarter allotted to him or occupied by him on resignation. He .. xx .. full and final settlement of the claims of the concerned workman within 48 hours from the time of the concerned workman vacates the quarter.

(d) In case any workman leaves .. xx. (e) Any workman absenting from duty without leave continuously for a period of 10 days or more shall be deemed to have left the services of the company of his own accord. The above conditions about the quarters shall apply to this case also (f) No workman shall be entitled to have leave during the notice period after submitting his resignation and no workman shall be paid for his un-availed leave on resignation unless he has been refused previously on application.

From the above, there remains no doubt; the above provisions shall apply as to the resignation of the workman which may be express or implied. In case of express resignation, the workman is to give one month notice or to pay notice period in lieu of notice and if the workman absenting from duty without any leave continuously for 10 days or more shall be deemed to have

left the service of the company on his own accord. According to the management the workman has remained absent on his own accord and treats his such absence as voluntarily abandonment of service. Despite such deeming provision, the management has given him such disputed notice of 2/4 days from receipt for invoking such 29 (e) Clause to treat his such absence as implied resignation. The absence of the workman from the 3rd January 2010 till the date of issuance of Ext. G on the 13th January 2010 is not disputed. On the other hand, the abandonment or resignation by the workman is disputed. Now it is to be seen if the workman remaining absent for such period can be said to have impliedly resigned under the principle of natural justice. The Learned Advocate for the management placed argument that there is no provision under the Standing Order-Ext.J for service of notice nor the period of such notice in case of such implied resignation but the notice of two days has been sent for holding the principle of natural justice. Admittedly, there is no dispute no date of service of notice of Ext. G is proved to be prior to Ext. H. There is also no dispute that 30 days notice is to be given by the workman to the management in case of his express resignation. On the other hand, 2 days is claimed to have been given by the management to workman to deem his absence as his resignation. Should not the management have given notice of 30 days to the workman for deeming his absence as resignation alike in case of express provision, particularly when his absence till the 2nd January 2010 is admitted to be on medical ground or should such giving of notice of two days be said to hold good the principle of natural justice, if at all such absence of the workman is permitted to be deemed as his resignation if the same be said *bona fide* not *mala fide* one as contended on behalf of the workman ?

8.9. No doubt, to my mind, such *bona fide* or *mala fide* is the mental state of affairs which can be proved through inferences from the facts and circumstances of the case. Exts. G and Ext. H are found contradictory as to notice period 2 days or 4 days as seen above. The service of such notice vide Ext.G is not found to have been proved though the same was issued as requirement prior to issuance of Ext.H to the workman. Nothing has been suggested to the workman as to his receipt of Ext.G prior to the 18th January 2010- Date of issuance of Ext.H nor he has been suggested to have left his service for remaining absent from duty without any leave. Importantly when W.W.1, in his cross- examination, has been given suggestion that he had applied for leave on medical ground from the 10th December 2009 to the 2nd January 2010 to which he admitted. In the next line at Para.25, W.W.1 denied the suggestion as to his non-extension of his leave since the 3rd January 2010. though W.W.1 admitted not to have any documentary evidence to show such extension but he stated to have sent extension form through his wife to M.K. Panda who was shift-in-charge. According to him, such extension was for 15 days. He also replied to the question of Ld. Advocate for the management that he had sent another extension letter through his wife for 10 days. W.W.1 denied the suggestion at Para.27 that he had not so sent extension letter to M.K. Panda. There is no suggestion to him that Shri Panda was not working as shift in charge nor that Shri Panda had no authority to receive any such letter. Admittedly Shri Panda has not been examined in this case. W.W.1 also admitted not to have attended the duty despite being at Jaykaypur on the 13th January 2010 and the 18th January 2010 since he was not well. He denied the suggestion of the Learned Advocate for the management that he did not intentionally and wilfully attend his duty. Admittedly, nowhere W.W.1 has been suggested that for his such absence his service be deemed that he has voluntarily left his service and that the same be held as his implied resignation. To my mind, remaining on leave till the 2nd January 2010 on medical ground and not resuming his

duty since 3rd January 2010 onwards can not be said voluntary resignation or abandonment as contended by the management since such absence can not be said of his intentional or wilful one for his resignation or abandonment of his service when W.W.1 negates and he claims to have sent leave extension letter. Despite such W.W.1 has not been suggested that he was well or fit to join. Even in absence of proof of such extension, his such absence may be called as overstayed or without permission as per Ext.J but it can not be said to be his implied voluntary resignation or abandonment of service. Of course, there is no doubt if a workman took his leave on medical ground but did not join after expiry of the leave, then the management can be said to have power initiate proceeding according to law after calling for show cause for reasonable period in absence of prescribed period such over-stay or/and absence without permission and to proceed in accordance with law. Even at all, such absence be deemed as his voluntary resignation or wilful abandonment only after giving him reasonable period of notice of show cause as to why his such absence shall not be deemed as his resignation as per Clause 29(e) of Ext.J and otherwise not. This reasonable period of notice for his implied resignation may not be said less than 30 days alike in case of express resignation under Clause 29(a) of Ext. J, in absence of any contrary provision therefore. There is no dispute as to submission of the Ld. Advocate for the management that there is no specific provision for notice of such implied resignation far less of notice period of 30 days. There is also no dispute that the management has contended to have given notice vide Ext.G to hold good the principle of natural justice. Thus question arises period of two days/four days notice which is not clear and sure to be sufficient for the said purpose. The answer may be opined to be negative in view of the above provision of notice of 30 days for express resignation . Can this opinion be said fortified by the contents of the service agreement-Ext.C as relied upon on behalf of the management.

8.10. The Advocate for the management took me through the relevant portion of it vide Clause 5 & 19. The same may be permitted to be reproduced as below:–

Ext.C Service agreement:

“..xx .. 5. The employee shall be subject to standing orders, all the Rules and Regulations of the Employer for the time being in force or to be enforced from time to time in future and duly observe and also carry out all the instructions given from time to time by the Employer ... xx .. 19. The employee on completion of two years successful apprenticeship may be discharged from the service of the employer, by giving 30 day's notice or payment in lieu of notice period in case of breach of any terms and conditions as stipulated in the standing orders and herein contained such as inefficiency, continued bad health, irregularity in attendance and/or other activities which are prejudicial interest of the employer or breach of any of the stipulations herein contained on the part of Employee.”

There is no dispute the workman having completed training was appointed on the 24th December,1993 as Trade Apprentice vide Ext. B and thereafter has been confirmed as “Assistant Operator” w.e.f the 1st January 1995 vide Ext.D. He has also been recommended for promotion to

the post of Operator-II w.e.f the 27th February 1997. As such, his such absence can not be deemed to be his voluntary resignation or abandonment of his service by giving such disputed notice as of compliance of principle of natural justice when he was admittedly sick prior to the 3rd January 2010 and even thereafter according to him remaining uncontroverted, in view of the above seen the pleadings and evidence. Consequentially striking off his name from the muster roll of the company by virtue of above notice vide Ext.G as contended on behalf of the management can not be said legal nor justified. Accordingly, such striking of his name from the rolls of company leading to termination by refusal of the employment of the workman or his discharge or his disengagement made by the management can be deemed as industrial disputes under Section 2A of I.D. Act and the same can be said retrenchment under Section 2 (oo) of it for any reason whatsoever admittedly not being consequence of any punishment not inflicted by way of disciplinary action as admitted and not being covered under exception clauses there under as seen above and having regard to the above relied upon authoritative pronouncements including as relied on behalf of the management. Consequentially, the contention of the management as submitted by its Learned Advocate that such striking off his name can not be said termination or refusal of his employment at the instance of the management can not be said true nor sustainable' in law. Thus, such contention is liable to be rejected and is hereby rejected. There is no dispute for such retrenchment of the workman, the provisions of law under Section 25 F of the I.D Act which is condition precedent for retrenchment has not been complied with. As such, the alleged termination can also not be said legal or/and justified. Accordingly these issues are answered.

9. *Issue No. (ii)* : As the alleged termination has already been held not legal nor justified, the workman is entitled to appropriate relief. The workman is found to have claimed relief of reinstatement with payment of full back wages. There is no dispute as seen above as to his nature of service to be permanent one. There is no proof of his re-engagement after such termination, save and except mere suggestion of his work in a patrol filling station. Such suggestion is also without any pleading. As such the same cannot be accepted as proof. There is also no dispute that the retirement age of the workman is apparently found not to have expired as per Ext.J nor the same is disputed by the management. At the same time the absence of workman without permission /sanction or/and the allegation of his misconduct can not be brushed aside, though not proved in this case. Admittedly, in his affidavit evidence, the workman is found to have claimed alternatively in lieu of his reinstatement, compensation of Rs 35,31,452 along with back wages of Rs 7, 87, 400. The same has not been disputed either by suggestion nor has been rebutted. On the other hand, the alternative claim of workman towards his back wages is found to have been included with the wages for his admitted absentee period which can not be said to be authorised one until and unless the same be sanctioned by the management. Moreover, such alternative claim is not found in his claim statement. As such his affidavit evidence without pleadings can not be accepted to proved in law, if be disputed by the management. The management can not be safely said in a lawful position in absence of pleadings in the claim statement to answer the same. Accordingly it can not be safely said that the workman is entitled to his alternative claim amount of compensation and back wages in absence of any proof any basis of such compensation and without such sanction

of back wages including bonus for the absent period unless the same is conceded by the management, particularly when the definition of wages under Section 2 (rr) of I.D. Act does not include bonus as claimed and when this Court may not be competent to grant gratuity by adjudication in case the same be disputed by the management in absence of any reference to that effect. Considering the above facts and circumstances and having regard to the legal position, I am of the humble opinion that the workman can be said to be entitled to relief of reinstatement with full back wages w.e.f. 18-01-2010. He also may be entitled to full back wages from the 3rd January 2010 till the 17th January 2010 subject to his unauthorised absence be made authorised by the management if permissible by law. The management is at liberty to take action for such unauthorised absence of the workman and his earlier misconduct if any, according to law including C.S.O vide Ext. J, if admissible and permissible after due compliance of provisions thereof and holding the principle of natural justice. The management is also at liberty to accept the alternative claim of the workman as per his affidavit evidence and to pay the same, in lieu of his claim of reinstatement, as admissible and permissible under law. Accordingly this issue is answered.

In view of the aforesaid findings, the reference is answered with the following order. Hence:

ORDER

This proceeding under reference be and the same is allowed on contest against the management in view of the above findings. Accordingly, it is held that the refusal of employment by way of striking off the name of the workman Shri B.K. Choubey, Ex-Operator, (Paper Machine) from the Muster Roll of Company w.e.f the 18th January 2010 by the management is neither legal nor Justified for the aforesaid reasons. Consequentially, it can be and is held hereby that the workman is entitled to relief of reinstatement with full back wages w.e.f from the 18th January 2010 for the aforesaid reasons. However, the management is at liberty to take action against the workman for his unauthorised absence and misconduct, if any, according to law including the provisions under C.S.O Ext. J, as admissible and permissible after due compliance of provisions thereof and holding the principle of natural justice as observed above. The management is also at liberty to accept the alternative claim of the workman as per his affidavit evidence and to pay the same subject to his application to be presented to it within one month from the date of publication of this 'Award' by notification, lieu of his claim of reinstatement as aforesaid, if admissible and permissible under law. Accordingly, the management is directed to give effect to this order by reinstating the workman, with payment of amount towards his full back wages to be calculated w.e.f the 18th January 2010 in equal three instalments within three months with start of 1st instalment, immediately, from the date of expiry of prescribed period from the date of the publication by notification of this 'Award' as per rules, failing which the amount remaining unpaid shall carry interest @9% there upon till the final payment is made. It is also made clear that if the workman presents such application to the management for his alternative claim as aforesaid, the same may be disposed of within two months from the date of its presentation. It is also made clear that the workman is at liberty to take recourse of law as available to him in case of failure of compliance of this order by the management. In the fact and circumstances of the case, no order as to cost. Accordingly, the above reference is answered. Send the copy this 'Award' forthwith to the appropriate government for necessary publication by notification under Section 17 of the I.D. Act, 1947.

Typed and corrected by me.
 Transcribed in office computer
 to my dictation partly by office
 Typist and partly by myself &
 Corrected by me.

PRAVURAM DAS ADHIKARI
 30-06-2025
 Presiding Officer
 Labour Court, Jeypore

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 30-06-2025
 Presiding Officer
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[No. 6807–LESI-IR-ID-0053/2025-LESI.]

By order of the Governor
 MADHUMITA NAYAK
 Special Secretary to Government

Witness examined on behalf of workman

W.W. No.1- Shri Binod Kumar Choubey.

Witness examined on behalf of management

M.W. No.1 - Sundeep Pandey, GM- HR & IR

Documents produced on behalf of workman

- Ext. 1 : Copy of the letter of appointment dtd. 16-1-1995
- Ext. 2 : Copy of the Charge Sheet dated 28-11-2009
- Ext. 3 : Copy of reply to Charge Sheet 30-01-2009
- Ext. 4 : Copy of Charge Sheet dated 07-12-2009
- Ext. 5 : Copy of reply to the Charge Sheet dtd. 7-12-2009
- Ext. 6 : Copy of notice of enquiring dtd. 7-12-2009
- Ext. 7 : Copy of failure report of conciliation office-cum-D.L.O, Rayagada.
- Ext. 8 : Copy of grievance Petition dtd. 2-12-2009.
- Ext. 9 : Copy of application by the second party dtd. 2-12-2009.
- Ext. 10 : Copy of the Letter dtd. 20.10.
- Ext. 6 : The next letter of annual increment dtd. 8-11-05
- Ext. 7 : The letter of annual increment dt 16-5-06
- Ext. 8 : The letter of annual increment dtd. 27-8-07
- Ext. 9 : The letter of annual increment dtd. 18-9-08
- Ext. 10 : The letter of annual increment dtd. 29-9-2009
- Ext. 11 : Copy of reply dtd. 25-10-2009 addressed to Security Officer, J.K Paper Mill.
- Ext. 12 : Copy of application dtd. 1-4-2011
- Ext. 13 : Copy of Letter No. 531/2010 dtd. 18-3-2010.
- Ext. 14 : Copy of the grievance application of the 2nd party dtd. 7-6-2012

Ext. 15 : Copy of counter views of the 2nd dtd. 10-7-2012.

Ext. 16 : Copy of requisition of ESI dtd. 24-12-2009 along with sickness report, discharge certificate and ESI report.

Documents produced on behalf of the management.

Ext. A : Appointment application

Ext. B, B/1, B/2 : Appointment Letter of three pages.

Ext. C : Service agreement.

Ext. D : Confirmation Letter dtd. 16-01-1995

Ext. E : Promotion Letter dtd. 27-2-1997

Ext. F : Promotion Letter dtd. 9-11-2004 from E to F.

Ext. G : Notice dtd. 13-01-2010 for invoking Clause 29(e) of CSO

Ext. H : Notice dtd. 18-1-2010 of invoking Clause 29(e) of CSO
(with objection).

Ext. J : Booklet of CSO.

Ext. K : Quarters allotment Letter dtd. 14-9-2006.